



November 27, 2001

Ms. Amanda Crawford
Assistant Attorney General
Public Information Coordinator
P.O. Box 12548
Austin, Texas 78711-2548

OR2001-5484

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155296.

The Office of the Attorney General (the "attorney general") received a request for all documentation "regarding the handling and archival placement of former Governor George Bush's papers." You indicate that you have released some of the responsive information. However, you claim that some of the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

First, you assert that some of the submitted information is subject to the attorney-client privilege and is therefore excepted from disclosure under sections 552.101 and 552.107. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This office has determined that section 552.101 does not encompass discovery privileges, such as the attorney-client privilege. *See* Open Records Decision No. 575 at 2 (1990). Nevertheless, section 552.107(1) of the Government Code excepts from public disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.* at 5. You indicate that portions of the submitted information constitute client confidences and attorney advice and opinion. We agree that most of the information you have marked under section 552.107 is protected thereunder and may be withheld. However, you have not adequately demonstrated how some of the submitted information constitutes a client confidence or attorney advice or opinion. Therefore, you may not withhold this information under section 552.107(1).

With respect to the remainder of the submitted information, we address your argument under section 552.111 of the Government Code. Section 552.111 of the Government Code provides that "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from [required public disclosure]." This section encompasses the deliberative process privilege. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000). The deliberative process privilege, as incorporated into the Act by section 552.111, protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 615 at 5 (1993). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, the deliberative process privilege does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.); ORD 615 at 4-5.

In Open Records Decision No. 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the advice, opinion, and recommendation of the drafter with regard to the form and content of the final document, so as to be excepted from public disclosure under the statutory predecessor to section 552.111. This office further concluded that section 552.111 excepts factual information in the draft to the extent the factual information also will be included in the final version of the document. *Id.* Thus, section 552.111 excepts from disclosure the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *Id.*

You contend that portions of the submitted information consist of interagency and intra-agency communications concerning the policymaking functions of both the Texas State Library and Archives Commission and the Governor's Office. You indicate that the specific policy issue discussed in the documents concerns the handling of the papers of former Governor George W. Bush. We agree that the information you seek to withhold under

section 552.111 consists of interagency and intra-agency communications concerning agencies' policymaking functions. Furthermore, we agree that most of the information you seek to withhold under section 552.111 consists of advice, opinion, or recommendations concerning that policy issue. We have marked those portions of the submitted information that may be withheld from disclosure under section 552.111 and the deliberative process privilege. The remainder of the submitted information does not constitute advice, opinion, or recommendation and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

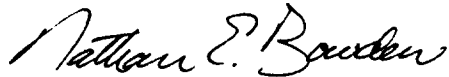
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 155296

Enc: Submitted documents

c: Mr. Lucius Lomax
P.O. Box 547
Austin, Texas 78767
(w/o enclosures)